

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33513

STATE OF IDAHO,)	2008 Unpublished Opinion No. 382
)	
Plaintiff-Respondent,)	Filed: March 3, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
ASENCION YBARRA,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Richard T. St. Clair, District Judge.

Order denying motion to withdraw guilty pleas, affirmed.

Asencion Ybarra, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Asencion Ybarra appeals from the district court's order denying his motion to withdraw his guilty pleas.

I.

FACTUAL & PROCEDURAL BACKGROUND

In 1990, Ybarra pleaded guilty to four counts of delivery of a controlled substance, two counts of failure to affix a drug stamp, one count of conspiracy to possess a controlled substance with the intent to deliver, and one count of racketeering. The judgment of conviction and sentence on these eight counts was imposed on June 6, 1990, resulting in an aggregate minimum period of incarceration of twenty years. Ybarra did not file a direct appeal from his judgment of conviction and sentence.

Ybarra thereafter filed an Idaho Criminal Rule 35 motion for reconsideration of sentence, the denial of which we affirmed in *State v. Ybarra*, 122 Idaho 11, 830 P.2d 522 (Ct. App. 1992). He later filed another Rule 35 motion, which was denied by the district court. An appeal from

that denial was dismissed for untimeliness. On May 15, 2006, Ybarra filed an I.C.R. 33 motion to withdraw his guilty pleas, making various arguments that he had been denied effective assistance of counsel. The district court denied the motion, explaining that it lost jurisdiction to hear such a motion after the judgment became final in July 1990. The district court also denied a motion to reconsider. Ybarra appeals. We affirm.

II.

ANALYSIS

The district court found that it did not have jurisdiction to hear Ybarra's motion to withdraw his guilty pleas. Jurisdiction is a question of law over which we exercise free review. *State v. Barros*, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998); *State v. Law*, 131 Idaho 90, 93, 952 P.2d 905, 908 (Ct. App. 1997).

Ybarra contends that the district court should have permitted him to withdraw his guilty pleas, arguing that, for various reasons, a manifest injustice had occurred. He correctly notes that Idaho Criminal Rule 33(c) provides that "to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea." Nevertheless, the district court did not have jurisdiction to grant a motion brought pursuant to Rule 33(c) almost sixteen years after Ybarra's convictions became final.

The Idaho Supreme Court squarely addressed this issue in *State v. Jakoski*, 139 Idaho 352, 79 P.3d 711 (2003). In that case, the defendant entered a guilty plea to various charges. Judgment was entered on December 22, 1994, and he did not appeal. Almost six years later, on December 19, 2000, the defendant filed a motion pursuant to Idaho Criminal Rule 33(c) seeking to withdraw his plea of guilty, alleging manifest injustice relating to ineffective assistance of counsel. The Supreme Court said:

This Court has long recognized that a court's jurisdiction to amend or set aside the judgment in a case does not continue forever. . . . Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.

....

Rule 33(c) of the Idaho Criminal Rules does not include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea. [The defendant] was sentenced on December 12, 1994, and the judgment was entered on December 22, 1994. He did not appeal the judgment, and it therefore became final 42 days later. Thereafter, the district

court no longer had jurisdiction to hear a motion to withdraw [the defendant's] guilty plea.

Id. at 354-55, 79 P.3d at 713-14.

Such is the case here. Judgment was entered against Ybarra on June 6, 1990. He did not appeal the judgment, and it therefore became final forty-two days later, on July 18, 1990. This was the last day upon which the district court had jurisdiction to hear a motion to withdraw Ybarra's guilty plea. Because the motion of May 15, 2006, was clearly untimely, we affirm the district court's order denying Ybarra's motion to withdraw his guilty pleas.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**